IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

LAND ACQUISITION REFERENCE NO.21 OF 1983

The Special Land Acquisition
Officer (7), Bombay and Bombay
Suburban District,
Municipal Corporation Extn.Bldg.,
Room No.24, Ground floor,
Bombay V.T. Bombay - 400 001.

And

The Secretary,
Govindram Bross Pvt.Ltd.
on behalf of the Estate
Investment Co.Pvt. Ltd.,
Sekseria Chambers, 139-Nagindas
Master Road, Fort, Bombay - 400 023. ...Claimant

And

The Municipal Corporation for
Greater Mumbai, Mahapalika Marg,
Mumbai. ...Acquiring
...Body

WITH

LAND ACQUISITION REFERENCE NO.25 OF 1984

The Special Land Acquisition
Officer (7), Bombay and Bombay
Suburban District,
Municipal Corporation Extn.Bldg.,
Room No.24, Ground floor,
Bombay V.T. Bombay - 400 001.

And

The Secretary,

Govindram Bross Pvt.Ltd.
on behalf of the Estate
Investment Co.Pvt. Ltd.,
Sekseria Chambers, 139-Nagindas
Master Road, Fort, Bombay - 400 023. ...Claimant

And

The Municipal Corporation for
Greater Mumbai, Mahapalika Marg
Mumbai. ...Acquiring
...Body

WITH

LAND ACQUISITION REFERENCE NO.26 OF 1984

The Special Land Acquisition
Officer (7), Bombay and Bombay
Suburban District,
Municipal Corporation Extn.Bldg.,
Room No.24, Ground floor,
Bombay V.T. Bombay - 400 001.

And

The Secretary,
Govindram Bross Pvt.Ltd.
on behalf of the Estate
Investment Co.Pvt. Ltd.,
Sekseria Chambers, 139-Nagindas
Master Road, Fort, Bombay - 400 023. ...Claimant

And

The Municipal Corporation for
Greater Mumbai, Mahapalika Marg
Mumbai. ...Acquiring
...Body

Mr.C.M. Korde with Mr.V.S.Singh with Mr.Shrikant Shah i/b Mehta Girdharlal for the Claimants.

Mr.O.J. Makhija with Mr.K.N. Gaikwad for the

Acquiring Body.

Mr.D. D'Mello, AGP for S.L.A.O. in L.A.R. No.21 of 1983.

CORAM : S.J. VAZIFDAR, J.
DATED : 12TH/13TH AUGUST, 2004.

ORAL JUDGMENT :

1. The above land acquisition references were referred by the Special Land Acquisition Officer (7), Bombay and Bombay Suburban District under Section 18 of the Land Acquisition Act, 1984 for determination of the amount of compensation to be awarded in respect of the lands acquired for the Bombay Municipal Corporation.

2. It was agreed between the parties that the evidence in the first matter would be read in the other two matters. The evidence was common as the owner and the acquiring body of all three plots of land were the same. Further the land in all three matters was acquired on the same date though by different notifications. The date for valuation of the land is also the same. Further the plots of land in each of the references are adjacent to each other. Accordingly the above references are dealt with by this common judgment.

3. The land in L.A.R. No.21 of 1983 was acquired for a D.P. Road. The land in L.A.R. No.25 of 1984 was acquired for a road depot. The land in L.A.R. No.26 of 1984 was acquired for a garden.

4. The lands in L.A.R. No.21 of 1983, L.A.R. No.25 of 1984 and L.A.R. No.26 of 1984 admeasure 1602 sq.mtrs., 8171.60 sq.mtrs. and 18,266.10 sq.mtrs. respectively.

5. In L.A.R. No. 21 of 1983, the B.M.C. by its letter dated 18th February, 1990 addressed to the Commissioner, requested for acquisition of the lands for the aforesaid purposes under the provisions of the Maharashtra Regional Town Planning Act (for short "M.R.T.P. Act.") read with the Land Acquisition Act (for short "L.A. Act."). The proposals to acquire the lands have been approved by the B.M.C. The development plan has been approved by the Government reserving the lands under these references for the purposes of a 56 ft. D.P. road. The draft development plan was published and the final development plan had come into effect from 15th October, 1966. Accordingly the Commissioner issued a notification under Sections 126(2) and (4) of the

M.R.T.P. Act read with Section 6 of the L.A. Act. A similar procedure was adopted by the B.M.C. in respect of the lands under L.A.R. Nos.25 of 1984 and 26 of 1984. In L.A.R. No.25 of 1984 the land was reserved under the same final development plan for a road depot for the B.M.C. In L.A.R. No.26 of 1984 the land had been reserved under the final development plan for the B.M.C. garden. The notifications in respect of the lands pertaining to L.A.R. Nos.25 of 1984 and 26 of 1984 under Section 126(2) and (4) of the M.R.T.P. Act read with Section 6 of the L.A. Act were also issued on the same date as the notifications in respect of the land in L.A.R. No.21 of 1983 i.e. 1st October, 1981. The possession of the lands was taken on 30th March, 1981 and 25th March, 1983 in L.A.R. Nos.21 of 1983 and 25 of 1984 and in L.A.R.No. 26 of 1984 on 23rd September, 1983 respectively.

6. The S.L.A.O. by his award in each of the references awarded a sum of Rs.190/- per sq.mtrs. The claimant being dissatisfied with the award applied for a reference to the Court under section 18 of the L.A. Act. The S.L.A.O. accordingly referred the matters to this court.

7. Before proceeding to decide the case on

merits, it is necessary to refer to certain events that transpired prior to the hearing. It appears that minutes of the order dated 9th October, 1989 were entered into between the parties in each of the above references. By orders all dated 12th October, 1989, a learned single Judge of this Court passed an order in terms of the minutes of the order and disposed of the references in terms thereof. However, a Division Bench of this Court by its orders and judgments all dated 8th March, 1995 in the above references set aside all the aforesaid orders dated 12th October, 1989 and remanded the references for fresh disposal. That is how the above references came to be heard.

8. The claimants examined three witnesses viz. one N.D. Seksaria, a Director of the Estate Investment Company Pvt.Ltd., one Ashok Chandrashekhar Vaidya, an Architect and Government approved valuer and one P.B. Samant, the owner of certain neighbouring lands. Only formal evidence of Seksaria was led to establish that the Estate Investment Company Pvt.Ltd. had no objection to the compensation being paid to the claimants, as the claimants had acquired the property.

9. A.C. Vaidya filed two affidavits containing

his examination-in-chief both dated 19th July, 2004. In the first affidavit, he has stated his qualification as an Architect and Government approved valuer. I do not intend stating in detail the contents of his affidavits, as there did not appear to be any dispute regarding his qualification as an Architect and Government approved valuer. I think the same is beyond doubt. It is necessary, therefore, only to deal with his evidence on merits.

10. A.C. Vaidya stated that the Claimants had sought the services of his firm for the purposes of determining the fair market value of the property ; that he personally visited the property as well as plots in the cited instances on which his report relied and tendered a valuation report valuing the acquired lands in the above references. He deposed that the contents of the valuation report are correct and to his knowledge. Similar affidavits were filed in all three references.

11. As stated in the valuation report, the valuer valued the land in L.A.R. No. 21 of 1983 as on 1st October, 1981 at the rate of 304 per sq.mtrs. He valued the land in L.A.R. No.25 of 1984 on the basis of "Hypothetical Plotting Scheme Method" and

"as-is-basis" at the rate of Rs.304/- per sq.mtr. and Rs.228/- per sq.mtrs. basis. In L.A.R. No.26 of 1984, he valued the land on the basis of "Hypothetical Plotting Scheme Method" and "as-is-basis" at the rate of Rs.304/- per sq.mtr. and Rs.242/- per sq.mtrs. Further the valuer has deducted an amount of Rs.20/- per sq.ft. of the area occupied by the structures in the possession of third parties. Further having done so, he arrived at a value of the land in L.A.R. No.21 of 1983 at Rs.282/- per sq.mtrs., in L.A.R. No.25 of 1984 at Rs.218/- per sq.mtrs. and in L.A.R. No.26 of 1984 at Rs.226/- per sq.mtrs.

12. The valuer has meticulously stated the background of the case leading to the acquisition. Clearly there is no dispute as to the situation and description of the land. Nor is there any dispute as to the area in possession. The only dispute between the parties is to the valuation of the lands.

13. The lands in all the references are situated near the junction of the 70 ft. wide Goregaon-Mulund Link Road and abut a 44 ft. wide D.P. Road. The portions of the land under L.A.R. No.21 of 1983 are situated at the distance of 1.25 kms. from Goregaon Railway Station at its east side. The Western Express

Highway is at a distance of only 300 mtrs. from the plot in L.A.R. No.21 of 1983. All civic amenities such as markets, schools, hospitals etc. are in close proximity. Similarly, all surface modes of public transport like buses, taxis and trains are available within walking distance. The lands under acquisition are situated in a mixed locality viz. residential and industrial. The area on the west and north side of the lands under acquisition is residential, whereas the area on the south and the east is industrial. This has been recognized in the award as well.

14. The valuer then goes on to state that the sales comparison method is the most appropriate one for valuation in the present case. He describes the same. The sales comparison method comprises of determining the market value of the property by analysing the instances of sales of similar lands in the neighbourhood. The valuer has at each stage taken into consideration the fact that the lands comprised in L.A.R. Nos.25 of 1984 and 26 of 1984 are larger in area. He was unable to find instances of sales of such large plots of land. He, however, came across two comparable instances of sale of plots in close proximity to the lands under acquisition. The plots of land are located in a private development scheme

prepared and executed by the said P.B. Samant. It is pertinent to note at this stage itself that the S.L.A.O. also considered these sale instances while arriving at the award. Though during the course of cross-examination, Mr.Makhija did establish that the sale instances are not very similar. I do not think that the evidence led has established that they are not at all comparable. I shall come to that aspect shortly.

15. The valuer has in great detail explained the hypothetical plotting scheme method adopted by him in view of his inability to obtain the sale instances of plots as large as the acquired plots. He prepared scheme on the basis of the hypothetical plotting scheme method in respect of the two larger plots of land. Since the plot of land would require internal roads, he provided the same. Plots such as these would also mandatorily require a part thereof to be retained for reclamation purposes. He made allowances for the same. Lastly, the valuer took into consideration the fact that there were encumbrances by way of the structures on parts of the acquired lands.

16. It is necessary at this stage for me to deal with the valuation report in so far as it relates to

the sale instances relied upon by the S.L.A.O. Suffice it to state at this stage that the valuer has in detail explained why there is some difference between the valuation arrived at by the S.L.A.O. and himself while considering the sale instances common to both.

17. Pausing for a moment, it must be noted that the claimant led the evidence of P.B. Samant to establish Exhibit C-1, C-2 and C-3 which were sale deeds in respect of sale instances relied upon by the claimant. It was necessary for the valuer to examine the trend of the price reflected from those documents as they were executed some time before the relevant date of the valuation viz. dated 1st October, 1981. The sale instance in Exhibit C-1 was dated 11th January, 1997, in respect of plot No.11 of Subhash Nagar. The sale instance in Exhibit C-2 was pursuant to a deed of sale dated 30th March, 1978 in the same scheme. The last Exhibit C-3 was the indenture dated 20th June, 1989 in respect of plot No.8 in the said scheme. The plots in Exhibits C-1 and C-2 establish that the plots were sold at the rate of about Rs.101.66 per sq.mtrs. in April/May, 1975 in Goregaon. It is true that these were smaller plots. Exhibit C-3 establishes that the plot was sold in

June, 1989 at the price of about Rs.350/- per sq.mtrs. There was some argument on the point in Exhibit C-3 as well. The absence of a consideration of all the plots to my mind does not reflect on the merits of the valuation report in any manner. The valuer has in his evidence deposed that the plots in Exhibit C-1 and C-2 were superior to the plots in Exhibit C-3 inasmuch as they were not affected by the Urban Land (Ceiling and Regulation) Act. The valuer has given necessary allowances on account of the location factor and U.L.C. factor. Indeed, the valuer has even made allowances for the period between 25th June, 1975 and 21st March, 1977 when emergency was declared in India for the reason that the prices during that period remained stagnant. After having made all these allowances, the valuer came to the conclusion that there was a rise in price of about 44.21% per annum.

18. I am unable to state that this evidence of the Valuer was ex-facie incorrect or unsatisfactory. There is no evidence to contradict him. There is nothing to suggest that his analysis is absurd or unsustainable. I see no reason to doubt his evidence on this aspect in any manner. In the circumstances, I do not think that there can be any grievance on the part of the acquiring body in this regard. There is a

plan attached to the valuation report, wherein the plotting has been clearly demarcated by the valuer. There is nothing to suggest that the manner in which he has carried out the plotting is illogical or unsustainable. There is nothing to suggest that the location of the plots is not in conformity with law relating to the development of such plots. There is nothing to suggest that the location of the plots is impermissible on any account including on account of access. Further the access to the plots is also convenient and I do not think that it can be suggested for any reason that the value of the plots would be less than the value of the sale instances relied on by both by S.L.A.O. and the claimant.

19. In paragraph 13 of the report, the valuer has described in detail various suggestions leading to establishment of the prices on these basis. I do not intend setting out the same in detail despite the fact that the valuer has taken considerable trouble in this regard, as I have ultimately decided the matter on the alternate proposal by the valuer himself which is only to the advantage of the acquiring body.

20. The valuer has however in paragraphs 13.17 and 13.18 opined that it is not necessary to apply any

deferment factor and he has in fact stated that it would be an error to apply a deferment factor. This is stated on the basis that normally the plots would be sold in a staggered manner. Thus the price realised on the sale of each of the plots would not be at the same time. In these circumstances, he opined that considering the situation prevailing in October, 1981 the need to defer would be more than compensated by the increase in the market value of the plots. I am unable to disagree with the above reasoning either. There is nothing which is established which suggests the contrary. His cross-examination was not shaken to any extent in this regard.

21. After valuing the property on the hypothetical plotting basis, the valuer analyzed his evidence regarding the valuation of the lands under acquisition on "as-is-basis". For this purpose, he stated that there is nothing to suggest that he took into account unauthorised construction standing in certain portions of the land under acquisition. There is no dispute regarding the number of structures. There is no dispute regarding the area occupied by the structure. At least there is no significant dispute in this regard between the parties. The valuer took into consideration the price of such structures that a

person would normally have paid for removal of such unauthorised structures. He states in paragraph 13.33 the enquiries he has made in this regard. Indeed his cross-examination only strengthens his evidence. In his affidavits of examination-in-chief, the valuer stated that he arrived at the price for the removal of the structure on the basis of the enquiries made by him. In cross-examination, he admitted that it was incorrect but it is pertinent to note that it is stated that the information furnished by him was on the basis of his own experience. This can only make his evidence more reliable. It can hardly reflect on him adversely. Further the reduction in the price on account of the structures was in respect of the area where the prices in fact are higher being closer to the city centre. Once again even on this aspect, there is no evidence to the contrary. I have no reason therefore to disbelieve him in this regard. It may be noted that the price was marginally higher but then the same has not been established before me. On the other hand, the valuer's evidence in this regard has not been shaken in any considerable manner or to any considerable extent. Thus after making these allowances, the valuer has arrived at a rate of Rs.4,52,000/-, Rs.17,81,000/- and Rs.41,26,000/- in respect of all the lands under acquisition viz.

L.A.R. Nos.21 of 1983, 25 of 1984 and 26 of 1984. The rate per sq.mtrs. was assessed by him at Rs.282/-, Rs.218/-, and Rs.226/- in respect of the lands under acquisition in L.A.R. Nos.21 of 1983, 25 of 1984 and 26 of 1984.

22. It is pertinent to note the cross-examination of the valuer in paragraphs 30 and 31 in this regard. He has explained quite convincingly that it was necessary to add Rs.50/- per sq.mtrs. in respect of Exhibit C-1 over the price of Exhibit C-3 in view of the fact that the same was not as well developed as Exhibit C-3.

23. I shall proceed on the basis of the "as-is-basis" in the present case. That is the least that can be said in favour of the Claimant. The basis has not seriously been questioned.

24. Mr.Makhija, however, pointed out that Samant in his cross-examination admitted that the sale instances in Exhibits C-1, C-2 and C-3 were entered into him for tax planning purposes. That may be so. It however, does not make a difference to the price. At least in his cross-examination, there is nothing to suggest that merely because the sales were entered

into for tax planning purposes, the transactions do not reflect the correct price or that the price of the land for that reason was enhanced.

25. Mr.Makhija also invited my attention to the cross-examination of the valuer in L.A.R. Nos.25 of 1984 and 26 of 1984. Firstly this pertains essentially to the hypothetical plotting scheme. As stated above I have accepted the valuation on the "as-is-basis". Mr.Makhija, however, pointed out that if the valuer had taken the price of Rs.350/- in respect of the plot pertaining to Exhibit C-3 then the annual rate of rise would have reduced by about 20% if the valuer had taken that price. Then the annual rate of rise would have been 34.49%. In that event he stated that the price would be marginally less than Rs.200/-. There is however a fallacy in the argument. Mr.Makhija presumed the valuer has stated that Rs.350/- should be the price of the said plots. It is true that Rs.350/- was the price of the plot covered by Exhibit C-3. However, as I have already observed earlier, the valuer has deposed to the effect that the plot in Exhibits C-1 and C-2 were better developed than the plot in Exhibit C-3. He therefore, adjusted the price calculating the annual rise. The highest that can be said in favour of the acquiring body here

is that the valuation may be reduced only marginally on this count. Although I am not at all sure that this would be fair to the claimant, this is the only factor that I have taken into consideration while fixing the price on an extremely charitable basis in favour of the acquiring body.

26. The mere fact that the valuer stated that the increase of 44% arrived at by him is hypothetical is of not much significance. Ultimately there cannot be any arithmetic precision while arriving at the prise. Nor can there be arithmetic precision while arriving at a rate of increase. In the present case, the valuer has arrived at the rate of increase and the price on a rational and cogent basis which has not been destroyed in the cross-examination.

27. Finally, I must state that the valuer has valued the said plots in an extremely responsible, fair and professional manner. I have not found his evidence at any stage to be unreliable. Even assuming that a different view can be taken, I am not prepared to state that his evidence is anything but proper and reliable.

28. Having said that, however, there is some scope

for reduction. I have taken an extremely charitable view in favour of the acquiring body. This, however, does not reflect on the valuer's evidence in any manner whatsoever. I realise that it would not be totally fair or proper to hold the Claimants to what he had agreed in the minutes of the order, the same having been set aside. It is a fact that at one stage it had agreed in the minutes of the order to the rate of Rs.200/-. However considering the fact that at least at one stage they were satisfied with that rate I do not think any prejudice would be caused to them if I were to maintain that rate. Added to this, of course, is the fact that in view of the question regarding the extent of development to the plots, there is something to be said while taking a charitable view in favour of the acquiring body.

29. In the circumstances, the references are answered as under :-

i) The lands under acquisition under the above three references are valued at Rs.200/- per sq.mtrs. Mr.Korde fairly states that at the rate of Rs.200/- per sq.mtrs. the Claimants have received all the amounts that would be decreed to them under the L.A. Act including

by way of solatium and interest.

ii) Mr.Makhija and Mr.Korde informed me that pursuant to the interim orders, the Claimants had already withdrawn the aforesaid amounts by furnishing a security. The security consisted of the documents of title of certain lands owned by the Claimants.

iii) The Prothonotary and Senior Master shall return to the Claimants such documents as the Claimants have deposited by way of security in the above matters after 1st October, 2004. On or after 1st October, 2004, the security created by the Claimants shall stand forthwith discharged.

iv) In the circumstances, there shall be no order as to costs.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

LAND ACQUISITION REFERENCE NO.21 OF 1983
WITH
LAND ACQUISITION REFERENCE NO.25 OF 1984
WITH
LAND ACQUISITION REFERENCE NO.26 OF 1984

DATE OF DECISION : 12TH/13TH AUGUST, 2004.

For Approval and Signature :

HON'BLE MR.JUSTICE S.J. VAZIFDAR.

1. Whether Reporters of Local Papers may be allowed to see the judgement ?)

2. To be referred to the Reporter or not ?)